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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Misc. Application No.4979-CII of 2006 and
C.E.A. No. 75 of 2006
Date of decision:1.2.2007

Commissioner of Central Excise Commissionerate, Jalandhar

... Appellant

Versus

M/S Satish Metal Co. B-224, Industrial Area, Jalandhar

... Respondent

CORAM: HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.Gurpreet Singh, Advocate for the appellant.
Mr.Sudhir Malhotra, Advocate for the respondent.

RAJESH BINDAL, J.

Civil Misc. Application No.4979-CII of 2006

For the reasons stated in the application, delay of 337 days in refilling the appeal is condoned.

C.E.A.No.75 of 2006

The Revenue has approached this Court by filing the present appeal under Section 35 G of the Central Excise Act, 1944 against the order dated July 16, 2004 passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi (for short 'the Tribunal') by seeking to raise the following substantial question of law:-

> "Whether in the absence of specific provisions in the statute i.e. in Rule 173Q(1) (bbb) for penalty which is inserted on a later date and there were generalized entries in Rule 173Q (1) (bb) & (d) to punish the guilty and guilt of the offender is provide(sic proved) beyond doubt and admitted by the

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offender, whether he can be let off for the reason of absence of specific provisions for the penalty on the date of commission of offence which are inserted on later date."

The issue appears to involve in the present appeal is regarding levy of penalty under Section 173Q(1) (bbb) of the Central Excise Rules, 1944. The charge against the assessee, who is a registered trader, is that he had wrongly passed on MODVAT Credit by issuing fake modvatable invoices in the year 1997 and 1998. The MODVAT credit was claimed by the subsequent buyers with regard to additional custom duty leviable under Section 3 of the Customs Tariff Act. It is not disputed before us that during the period in question when the transactions took place, availing of MODVAT credit on additional custom duty was not treated as an offence chargeable to penalty. It was only vide amendment dated July 14, 1999 that the same became liable to penal action. It is also not disputed by the learned counsel for the Revenue that the transactions in the present case took place before the amendment in question was carried out. The counsel for the revenue has referred to circular No. 472/38/99-CX dated 21.7.1999 issued by the Ministry of Finance wherein it is specifically stated that penal provisions for wrongly passing on MODVAT credit on additional duty under the Custom Tariff Act did not exist before the amendment effected vide notification dated July 14, 1999. In view of this undisputed position when the transactions in question were not liable to penal action during the relevant period then there is no reason for levying penalty thereon by placing reliance on the amendment which is effected later on.

Accordingly, we do not find that any substantial question of law would arise in the present appeal. Thus, the same is dismissed.

(Rajesh Bindal)
Judge

February 01,2007
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(M.M.Kumar)
Judge